

# Committee on Resources

## Subcommittee on Water & Power

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### Testimony

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Testimony of Arthur Lopez, Chairman of The  
Torres-Martinez Desert Band of Cahuilla Indians  
Before The United States House of Representatives  
Committee on Resources, Subcommittee on Water And Power  
Washington D.C. 20515  
Before The Honorable John T. Doolittle, Chairman  
Subcommittee on Water and Power  
H.R. 3267 "Sonny Bono Memorial Salton Sea Reclamation Act"  
Thursday, March 12, 1998, 10:00 A.M.  
Room 1334, Longworth H.O.B.

Mr. Chairman, Members of the Committee, my name is Art Lopez. I'm the Chairman of the Torres-Martinez Desert Band of Cahuilla Indians, whose address is P.O. Box 1160 in Thermal, California, zip code 92274. It is both an honor and a privilege for me to testify here on H.R. 3267, a Bill entitled "Sonny Bono Memorial Salton Sea Reclamation Act." The Torres-Martinez Band considered Sonny Bono a dear friend who supported the Band in many important issues before Congress. I, too, worked with Congressman Bono in the 104th Congress on a Bill that would have compensated the Torres-Martinez Band of Desert Cahuilla Indians for the Tribe's lands that have been inundated by the Salton Sea, which have been lost to us since 1909. Congressman Bono worked hard with the Torres-Martinez Band to get that legislation passed. Consequently, I, too, am pleased to testify on behalf of the Torres-Martinez in support of this important legislation. As many of the Bill sponsors know, the Torres-Martinez Band is located near the Salton Sea. Many of our lands are inundated by or adjacent to the Salton Sea. Our ancestors have been located in the Salton Sea area since time immemorial. We have enjoyed the Salton Sea when it was first created as many of the citizens of Southern California enjoyed in the early days.

Because of the Torres-Martinez location in relationship to the Salton Sea, the clean-up of the Salton Sea will have a very positive impact on the Torres-Martinez Band. The economic and environmental benefits on our lands adjacent to the Salton Sea will be substantial. The Torres-Martinez Band looks forward to the day when they can benefit from their relationship to the Salton Sea, a day when fish and wildlife will be bountiful and tourists will come to enjoy not only the fish and wildlife, but also the Sea as the recreation area that it once was known to be. The Torres-Martinez Band welcomes this time and looks forward to participating with the other governmental agencies in bringing about this great event of reclaiming the sea.

In order to assure our participation, the Torres-Martinez Band would recommend that it not only be a member of the Salton Sea Research Management Committee, but that it be a full member of the governments that are delegated responsibility under the Bill and recognized by Congress as having a historic relationship to the Salton Sea. It is the position of the Torres-Martinez Band that it be included, along with the Secretary, the Salton Sea Authority and the Governor of California as a party to the Memorandum of Understanding set forth in Section 101(c)(5)(A) of Title I of the Bill. Our location and the fact that we have remained a part of the Salton Sea for decades justifies our participation in this important undertaking.

Without our full participation, we cannot be assured of the full benefits which this Bill would give to our Tribe because of other conflicts that may arise between the Secretary, the counties, the irrigation districts, and the state of California. Consequently, Mr. Chairman, I would recommend that the Torres-Martinez Desert Band of Cahuilla Indians be included as one of the parties to the Memorandum of Understanding under Section 101(c)(5)(A) of Title I.

Again, Mr. Chairman, we would like to be included in Section 101(d)(2) entitled "Cost Sharing Agreement." That section states that the Secretary may not initiate construction of the project unless within a 60 day period referred to in paragraph 1, the Secretary, the Governor of California, the Salton Sea Authority enter into an agreement establishing a cost sharing formula that applies to that construction. It is the position of the Torres-Martinez Desert Band of Cahuilla Indians that it too should be part of that agreement with regard to cost sharing so that it can be a full participant in the clean-up of the Salton Sea. Again, we feel justified in requesting this participation in that only then will we be recognized as a full participant in the clean-up and be assured that benefits that accrue will also accrue to the Torres-Martinez Band. Mr. Chairman, I strongly recommend that the Bill be amended to add the Torres Martinez Desert Band of Cahuilla Indians to Section 101(d)(2).

Although the Torres Martinez Desert Band of Cahuilla Indians fully supports the intent and purpose of H.R. 3267 entitled the "Sonny Bono Memorial Salton Sea Reclamation Act," I would be remiss if I didn't raise the issue of compensating the Torres Martinez Desert Band of Cahuilla Indians prior to cleaning up the Salton Sea and granting an approved flowage easement for the Sea. I am certain that Congressman Bono would have wanted these issues to be resolved prior to or in conjunction with the clean-up of the Sea. As I indicated in my opening statement, Congressman Bono and other members of the California delegation supported the Torres-Martinez Band in the 104th Congress in their efforts to be compensated by the United States for tribal lands that have been inundated and spoiled by the Salton Sea. The Torres-Martinez Band's compensation bill was defeated primarily because of a gaming provision in the legislation.

The parties to litigation styled United States of America, in its own right and on behalf of the Torres-Martinez Band of Mission Indians and the allottees therein v. the Imperial Irrigation District and Coachella Valley Irrigation District, Case No. 82-1790-K(M) and a case styled The Torres Martinez Desert Cahuilla Indians, et al. v. Imperial Irrigation District, et al., Case No. 91-1670-J(LSP), have agreed to stay the legal proceedings in these cases with the understanding that the legal issues and the compensation to be given to the Torres-Martinez Band and their allottees should be settled by a negotiated settlement. However, the United States and the Torres-Martinez Band have been unable to reach a settlement.

Consequently, I'm requesting that this Bill be amended to include either as Title I or as Title III the equitable compensation of the Torres Martinez Desert Band of Cahuilla Indians and for the granting of a flowage easement to the Imperial Irrigation District and the Coachella Valley Water District and the other entities that cause water to be deposited into the Salton Sea. Only upon the compensation of our Tribe and the granting of the flowage easements will it be proper for creating a memorial to the late Congressman Bono's honor. I would therefore request that H.R. 3267 be amended to include a Title which equitably compensates the Torres-Martinez Band of Mission Indians for the lands that are currently inundated and spoiled as a result of the Salton Sea. I would also further request that this Bill be amended to add a flowage easement to the named parties for their benefit. With these issues being resolved, the litigation discussed above can be dismissed with prejudice, future conflicts over the Salton Sea can be avoided, and the integrity and success of the "Sonny Bono Memorial Salton Sea Reclamation Act" can be assured.

Mr. Chairman, I propose the following amendment:

### **Title III-Equitable Compensation to the Torres Martinez Desert Band of Cahuilla Indians and granting of a flowage easement.**

#### **SECTION 301. CONGRESSIONAL FINDINGS AND PURPOSES.**

(a) FINDINGS.-The Congress finds and declares that:

(1) In 1876, the Torres-Martinez Indian Reservation was created, reserving a single, 640-acre section of land in the Coachella Valley, California, at the northern end of the Salton Sink. The Reservation was expanded in 1891 by Executive Order, pursuant to the Mission Indian Relief Act of 1891, adding about 12,000 acres to the original 640-acre reservation.

(2) Between 1905 and 1907, flood waters of the Colorado River filled the Salton Sink, creating the Salton Sea, inundating approximately 2,000 acres of the 1891 reservation lands.

(3) In 1909 an additional 12,000 acres of land, 9,000 of which were then submerged under the Salton Sea, were added to the reservation under a Secretarial Order issued pursuant to a 1907 amendment of the Mission Indian Relief Act. Due to receding water levels in the Salton Sea through the process of evaporation, at the time of the 1909 enlargement of the reservation, there were some expectations that the Salton Sea would recede within a period of approximately 15 years.

(4) Through the present day, the majority of the lands added to the reservation in 1909 remain inundated due in part to the flowage of natural run-off and drainage water from the irrigation systems of the Imperial, Coachella, and Mexicali Valleys into the Salton Sea.

(5) In addition to those lands that are inundated, there are also tribal and individual Indian lands located on the perimeter of the Salton Sea that are not currently irrigable due to seepage of salt water into these lands by osmosis.

(6) In 1982, the United States brought an action in trespass entitled *AUnited States of America, in its own right and on behalf of Torres-Martinez Band of Mission Indians and the Allottees therein v. The Imperial Irrigation District and Coachella Valley Water District*, Case No. 82-1790 K (M) (hereafter in this section referred to as the "U.S. Suit") on behalf of the Torres-Martinez Indian Tribe and affected Indian allottees against the two water districts seeking damages related to the inundation of tribal and allottee-owned lands and injunctive relief to prevent future discharge of water on such lands.

(7) On August 20, 1992, the Federal District Court for the Southern District of California entered a judgment in the U.S. Suit requiring the Coachella Valley Water District to pay \$212,908.41 in past and future damages and the Imperial Irrigation District to pay \$2,795,694.33 in past and future damages in lieu of the United States' request for a permanent injunction against continued flooding of the submerged lands.

(8) The United States, the Coachella Valley Water District and the Imperial Irrigation District have filed notices of appeal with the United States Court of Appeals for the Ninth Circuit from the district court's judgment in the U.S. Suit (Numbers 93-55389, 93-55398, 93-55402), and the Tribe has filed a notice of appeal from the district court's denial of its motion to intervene as a matter of right (No. 92-55129).

(9) The Court of Appeals for the Ninth Circuit has stayed further action on the appeals pending the outcome of settlement negotiations.

(10) In 1991, the Tribe brought its own lawsuit, Torres-Martinez Desert Cahuilla Indians, et al., v. Imperial Irrigation District, et al., Case No. 91-1670 J (LSP) (hereafter in this section referred to as the "Indian Suit") in the United States District Court, Southern District of California, against the two water districts, and amended the complaint to include as a plaintiff, Mary Resvaloso, in her own right, and as class representative of all other affected Indian allotment owners.

(11) The Indian Suit has been stayed by the District Court to facilitate settlement negotiations.

(12) It is the collective judgment of all concerned that Congress should enact legislation to resolve this dispute and to compensate the Indians for their losses and once legislation is passed and signed into law, to allow the court suits to be dismissed with prejudice.

(b) PURPOSE.CThe purpose of this Act is to equitably compensate the Torres-Martinez Band of Desert Cahuilla Indians for the loss of the use of their lands resulting from inundation and spoiling of said lands by the Salton Sea, to allow for the dismissal with prejudice of the law suits that have been filed and to grant to IID and CVWD a flowage easement by the Torres-Martinez Band, the affected allottees and the United States.

## **SECTION 302. COMPENSATION.**

### **(a) ESTABLISHMENT OF TRIBAL AND ALLOTTEES COMPENSATION TRUST FUNDS ACCOUNTS.C**

(1) IN GENERAL.CThere are established in the Treasury of the United States three compensation trust fund accounts to be known as the "Torres-Martinez Compensation Trust Funds Account", the "Torres-Martinez Compensation Economic Recovery Trust Funds Account", and the "Torres-Martinez Compensation Economic Recovery Interest Trust Funds Account", respectively.

(A) The Secretary shall have responsibility for the administration, investment and distribution of all sums deposited into, accruing to, and remaining in, the "Torres-Martinez Compensation Trust Funds Account," and shall invest all non-distributed sums in these accounts in accordance with 25 U.S.C. Sec. 162(a).

(B) Any and all sums held in the "Torres-Martinez Compensation Trust Funds Account" shall be available for distribution to the Tribe as may be requested by the Tribe subject to the following conditions:

(i) The Tribe shall use such sums only for the purposes of education, land acquisition, economic development, youth and elderly programs, or other tribal purposes, including, but not limited to, the payment of attorney fees for legal services rendered to the Tribe in connection with the U.S. Suit, the Indian Suit, any related litigation and the settlement of the same, in accordance with plans and budgets developed by the Tribe and approved by the Secretary.

(ii) Nothing in this subsection or any other section of this Title may be construed as prohibiting the Tribe from using a portion of the sums held in the "Torres-Martinez Compensation Trust Funds Account" for the purpose of making per-capita payments to members of the Tribe; provided, that such portion shall not exceed twenty five percent (25%) of the Tribal amount of the sum held in the ATorres-Martinez Compensation Trust Funds Account.@

(C) All funds deposited into the "Torres-Martinez Compensation Economic Recovery Trust Funds Account"

are to remain in the United States Treasury and to be invested in government securities issued by the United States.

(D) The Secretary of the Treasury shall have responsibility for the administration, investment and distribution of all sums deposited into, accruing to, and remaining in, the "Torres-Martinez Compensation Economic Recovery Interest Trust Funds Account" and shall invest all sums in this account in government securities issued by the United States.

(E) All interest deposited into the "Torres-Martinez Compensation Economic Recovery Interest Trust Funds Account" shall be available, without fiscal year limitation, for use by the Secretary of the Interior, commencing with fiscal year 1999, and each fiscal year thereafter, in making payments to the Torres-Martinez Desert Cahuilla Indians for use for educational, social welfare, economic development and other programs, subject to the approval of the Secretary. No part of the principal of the Torres-Martinez Desert Cahuilla Indian Economic Recovery Fund shall be available for making such payments.

(F) The Secretary agrees to make payments to the Tribe from the "Torres-Martinez Compensation Economic Recovery Interest Trust Funds Account" promptly, provided the Tribe has submitted plans for said money promptly and the Secretary has approved of said tribal plans.

## (2) AVAILABILITY.-

(A) Amounts held in the "Torres-Martinez Compensation Trust Funds Account" shall be available to the Secretary of the Interior for distribution to the Tribe and the affected allottees in accordance with a negotiated agreement between the Secretary, the Justice Department, the Imperial Irrigation District, the Coachella Valley Water District, the Tribe and the affected allottees. In the negotiated agreement, the Secretary is directed to seek a contribution from IID and CVWD for distribution to the Tribe and the affected allottees in the amount of \$4,000,000 as partial consideration for the dismissal with prejudice of the lawsuit.

(B) Amounts held in the "Torres-Martinez Compensation Economic Recovery Interest Trust Funds Account" for the Tribe shall be available to the Secretary for distribution to the Tribe pursuant to a tribal plan submitted to the Secretary by the Tribe for the purpose of utilizing said interest monies annually beginning on October 1, 1999 and each and every year thereafter.

## **SECTION 303. TRUST LAND ACQUISITION AND STATUS**

(a) Notwithstanding any other provision of law, the tribal council may, on behalf of the Tribe:

(1) acquire land located within the reservation area after the date of the enactment of this Act into law and take title to such lands in fee simple, and

(2) lease, sell, or otherwise dispose of such lands in the same manner in which a private person may do so under the laws of the state.

(b) Notwithstanding any other provision of law or regulation, at the written request of the tribal council, the Secretary may:

(1) accept conveyance to the Secretary by the tribal council (on behalf of the Tribe) of Title to any land

located within the reservation area that is acquired by the tribal council in fee simple after the date of enactment of this Act into law; and

(2) hold such title upon such conveyance by the tribal council, in trust for the benefit of the Tribe, provided that lands may not be taken into trust if they are located both North of Township 6 South and West of Range 8 East within Riverside County.

(c) Notwithstanding any other provision of law or regulation, the Attorney General of the United States shall approve any deed or other instrument which conveys title to land within the reservation area, to the United States to be held in trust by the Secretary for the benefit of the Tribe.

(d) All lands taken into trust shall become part of the Torres-Martinez Indian Reservation.

## **SECTION 304. PERMANENT FLOWAGE EASEMENTS.**

### **(a) CONVEYANCE OF EASEMENT TO COACHELLA VALLEY WATER DISTRICT.-**

(1) TRIBAL INTEREST.-The United States, in its capacity as trustee for the Tribe, as well as for any affected Indian allotment owners, and their successors and assigns, and the Tribe in its own right and that of its successors and assigns, shall convey to the Coachella Valley Water District a permanent flowage easement as to all Indian trust lands (approximately 11,800 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of this Act.

(2) UNITED STATES INTEREST.-The United States, in its own right shall, notwithstanding any prior or present reservation or withdrawal of land of any kind, convey to Coachella Valley Water District a permanent flowage easement as to all Federal lands (approximately 110,000 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of this Act.

### **(b) CONVEYANCE OF EASEMENT TO IMPERIAL IRRIGATION DISTRICT.-**

(1) TRIBAL INTEREST.-The United States, in its capacity as trustee for the Tribe, as well as for any affected Indian allotment owners, and their successors and assigns, and the Tribe in its own right and that of its successors and assigns, shall grant and convey to the Imperial Irrigation District a permanent flowage easement as to all Indian trust lands (approximately 11,800 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of this Act.

(2) UNITED STATES.-The United States, in its own right shall, notwithstanding any prior or present reservation or withdrawal of land of any kind, grant and convey to the Imperial Irrigation District a permanent flowage easement as to all Federal lands (approximately 110,000 acres) located within and below the minus 220-foot contour of the Salton Sink, in accordance with the terms and conditions of this Act.

(c) The exact language of the flowage easements shall be negotiated in the agreement negotiated between the parties referred to in Section 302(a)(2)(A) of Title III.

## **SECTION 305. SATISFACTION OF CLAIMS, WAIVERS, AND RELEASES.**

(a) SATISFACTION OF CLAIMS.-The benefits available to the Tribe and the allottees under the terms and conditions of the provisions of this Act shall constitute full and complete satisfaction of the claims by the Tribe and the allottees arising from or related to the inundation and spoilage of tribal and allottee lands

currently inundated and saturated with salt.

(b) The disputes giving rise to and being resolved by this Act concern the inundation of specified Indian lands, and have not concerned either water rights or the enforcement of federal or state environmental laws, statutes, and regulations. Further, nothing in this Act may be construed as barring the initiation of suits or actions to enforce applicable water rights, environmental laws, statutes, or regulations.

(c) **APPROVAL OF WAIVERS AND RELEASES.**-The United States hereby approves and confirms the releases and waivers required by this Act.

### **SECTION 306. MISCELLANEOUS PROVISIONS.**

(a) **ELIGIBILITY FOR BENEFITS.**-Nothing in this Act shall affect the eligibility of the Tribe or its members for any Federal program or diminish the trust responsibility of the United States to the Tribe and its members.

(b) **ELIGIBILITY FOR OTHER SERVICES NOT AFFECTED.**-No payment pursuant to this Act shall result in the reduction or denial of any Federal services or programs to the Tribe or to members of the Tribe, to which they are entitled or eligible because of their status as a federally recognized Indian tribe or member of the Tribe.

(c) **PRESERVATION OF EXISTING RIGHTS.**-Except as provided in this Act, any right to which the Tribe is entitled under existing law shall not be affected or diminished.

### **SECTION 307. AUTHORIZATION OF APPROPRIATIONS.**

(a) There are authorized to be appropriated to the Secretary to carry out the equitable compensation of the Torres-Martinez Band the following:

(1) To be deposited into the "Torres-Martinez Compensation Trust Funds Account" to pay the Tribe and the affected allottees, \$10,200,000.

(2) To be deposited into the "Torres-Martinez Economic Recovery Trust Funds Account" to be held in the Treasury of the United States for the benefit of the Torres-Martinez Band, \$100,000,000.

### **SECTION 308. EFFECTIVE DATE.**

(a) This Act shall take effect on the date of enactment of this Act.

Mr. Chairman, it is my firm belief that the Torres-Martinez Band should be compensated and flowage easements granted to the parties responsible for maintaining the Salton Sea at its current level prior to the clean-up of the Salton Sea. Without these issues being resolved, the very existence of the Salton Sea is subject to challenge because Torres-Martinez tribal and allotted lands and the lands of the United States are being trespassed on by the waters that are flowing into the Sea causing the Sea to rise to its current levels. I would therefore strongly urge this Committee to recommend the amendment that I have proposed here today.

In support of the \$114.2 million requested as compensation, I have included as Appendix A a spreadsheet that sets forth the total amount of crops that were produced in terms of value in the Coachella Valley from

1935 to the present and took 20% of that value and multiplied it by 90% of the acreage that has been inundated or spoiled by the Salton Sea to determine a value for the lost use of the land from 1935 to the present. The total value of the loss, Mr. Chairman, is over \$300 million and if we present value it at 6% interest per year, the value of the loss becomes almost \$1.4 billion. The value of the crops grown in the Coachella Valley is provided each year by the Department of Agriculture from reports filed by the farmers.

As you can see, Mr. Chairman, we are not requesting the full value of what we feel we have lost. We are requesting a very small percentage of that value. The Torres-Martinez Band is requesting these dollars at the level requested in order to be justly compensated and at the same time do the Tribe's part in assisting in the clean-up of the Salton Sea. We are not unmindful of the fact that the Torres-Martinez Band will greatly benefit from such a clean-up and we will have ample opportunity to seek out these economic benefits in the future. We do believe, however, that our request for \$114.2 million is justified given the numbers generated by the CVWD farmers and loss of the use of our lands as a result of the Sea being created and maintained. We would therefore strongly request that this Committee support our proposed amendment at the level of funding that we have requested to settle our claims for the loss of the use of our land for the past 90 years.

In closing, Mr. Chairman, I'd like to reiterate the Torres-Martinez Band's total support for this H.R. 3267 Bill entitled "Sonny Bono Memorial Salton Sea Reclamation Act" for the reasons set forth in my testimony here today. Sonny Bono was a great man and a great friend to our Tribe and we will miss him dearly as we pursue the causes of the Torres-Martinez Band. I am honored to have the privilege to testify in support of this important legislation. I trust that you will give my recommendations your utmost consideration. I thank you and the other members of the Committee for the time you have allotted me to testify here today. Thank you very much.

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